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Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 6, 1998

VIA UPS OVERNIGHT

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: In the Matter of Connecticut Department of Public Utility Control Petition for Rulemaking, DA 98-743 (RM No. 9258)

Dear Sir:

Enclosed for filing in the above-referenced matter are the original and four copies of Comments of the Public Utility Commission of Texas.

Two copies are also being sent to Jeannie Grimes, Common Carrier Bureau, FCC, Suite 235, 2000 M Street, N.W., Washington, DC 20554 and one copy to ITS, at 1231 20th Street, N.W., Washington, DC 20036.

Please file stamp and return the additional copy of the instrument in the enclosed self-addressed and postage paid envelope.

512/463-2100 P.O. BOX 12548 AUSTIN, TEXAS 78711-2548

Thank you for your assistance in this matter.

Sincerely yours,

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Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Connecticut Department of Public Utility Control Petition for Rulemaking	)	DA 98-743 (RM No. 9258)

COMMENTS OF
THE PUBLIC UTILITY COMMISSION OF TEXAS

The Public Utility Commission of Texas (PUCT) files the following comments in support of the petition of the Connecticut Department of Public Utility Control (Connecticut Department) requesting the Federal Communications Commission (Commission) to amend its rule prohibiting technology-specific or service-specific area code overlays.

I. Background

The PUCT petitioned the Commission to authorize a service-specific overlay in 1996, and the Commission denied the request in the *Local Competition Second Report and Order.*[1] Consequently, the PUCT limited Numbering Plan Area (NPA) relief for the 214 NPA (Dallas metropolitan area) and 713 NPA (Houston metropolitan area) to geographic splits. The Dallas NPA relief was implemented on September 14, 1996, with the addition of the 972

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[1] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order,* 11 FCC Rcd 19392, (1996) (*Local Competition Second Report and Order), petition for reconsideration pending, vacated in part, People of the State of California v. FCC,* 124 F.3d 934 (8th Cir. 1997), *cert. granted, sub nom., AT&T Corp. v. Iowa Util. Bd.,* 118 S.Ct 879 (1998).

NPA, and the Houston NPA relief was implemented on November 2, 1996, with the addition of the 281 NPA. Less than a year later, the Texas number administrator declared the 281, 713, and 972 NPAs in jeopardy of NXX Code exhaustion.[2] The rapid exhaust of the NPAs appears due to a combination of factors such as: customer growth in the wireless industry, the increase in multiple lines for homes and businesses, and new market entrants in the wireline industry.

The PUCT initiated aggressive number conservation measures in response to the jeopardy situation beginning in September 1997 and has been revising and expanding them since then. Consolidation of rate centers with the same local calling scope was implemented in the Dallas, Houston, and Austin metropolitan areas on March 15, 1998. However, it appears that additional number conservation efforts cannot be completed in time to extend the life of existing NPAs, and a relief plan for the Houston, Dallas, and Austin/Corpus Christi metropolitan areas presently is pending before the PUCT. The option of implementing a service-specific overlay, coupled with a modification of the ten-digit dialing requirement for overlays, would provide a valuable option for Texas and other states. For example, in the Houston metropolitan area, 180 NXX codes are assigned to wireless carriers in the 713 NPA, and 152 NXX codes are assigned to wireless carriers in the 281 NPA. If the wireless carriers could be reassigned to a service-specific overlay, 232 NXX codes would be available for

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[2] The number administrator declared the 972 NPA in jeopardy in May 1997, and the 713/281 NPAs in jeopardy in September 1997. The 512 NPA, including the Austin and Corpus Christi metropolitan areas, is also now in jeopardy.

assignment, and NPA relief for the two existing Houston area NPAs could be deferred for a year or more.

II. COMMENTS

The PUCT urges the Commission to initiate a rulemaking regarding the issues raised in the Connecticut petition. The experience of individual states in providing NPA relief and in assessing the scope and development of competition provides the Commission with important new information that was unavailable when the Commission issued its prior rulings regarding NPA overlays.

A. Circumstances Have Changed Since The Commission Issued Its Prior Rulings.

1. The Frequency Of NPA Relief Is Increasing.

Since the Commission issued the *Ameritech Order*[3] and the *Local Competition Second Report and Order*, rapid and repeated NPA relief has become an unfortunate fact of life in most U.S. metropolitan areas, and the rate at which additional NPA relief is needed is accelerating. The *Local Competition Second Report and Order* expressly authorized state commissions to oversee the development and implementation of NPA relief plans. Many state commissions, like the PUCT, have had first-hand experience addressing and balancing the many competing concerns that arise in the NPA relief process. Since 1994, the PUCT has reviewed and adopted relief plans for four NPAs and is reviewing plans for three NPAs

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[3] Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois, *Declaratory Ruling and Order,* IAD File No. 94-102, 10 FCC Rcd 4596 (1995) (*Ameritech Order).*

currently in jeopardy. The PUCT respectfully requests the opportunity for it and other state commissions to share their experience in NPA relief and to assist the Commission in reviewing and revising its rule regarding overlay NPA relief.

2. Exclusion and Segregation Are Not Unduly Discriminatory Because Wireless And Wireline Carriers Are Not Direct Competitors.

One of the Commission's fundamental premises in its prior orders was that competition exists between wireless and wireline carriers and should be protected. Consequently, the Commission prohibited NPA overlays with exclusion, segregation, or take-back features. As Connecticut has noted, however, this prohibition does not account for current market circumstances, customer preferences, or the full costs of NPA relief. Exclusion and segregation are unduly discriminatory only if wireline and wireless carriers directly compete for market share. Like Connecticut, the PUCT does not believe that they do. Customers use both wireline and wireless services, but there is no evidence that they do so interchangeably.[4] Based on input from numerous public hearings, customers do not view a separate NPA for wireless carriers as a negative factor which would influence their purchasing decision. Consequently, a service-specific overlay is not anti-competitive and the exclusion and segregation are not unduly discriminatory. Further, as noted below, the discrimination may be justified by technological differences and capabilities. The inability of wireless carriers to provide permanent number portability diminishes the effectiveness of

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[4] As Connecticut states, the universal service fund exclusion of wireless carriers implicitly suggests that wireless service is not a substitute for wireline service.

number pooling, an important number conservation tool, and may accelerate the need for NPA relief.

Since 1995, the PUCT has sought to foster competition in the telecommunications market, first through its authority under the Public Utility Regulatory Act,[5] and then under the Federal Telecommunications Act of 1996[6] as well. Among other activities, it has presided *en banc* over interconnection arbitrations, universal service fund proceedings, and Southwestern Bell's Section 271 proceeding in its efforts to expedite the transition to competition. Based on the PUCT's experiences, however, it does not appear that the interests of competition in the telecommunications market are advanced by the Commission's prohibition of a service-specific overlay.

3. Wireless Carriers Would Not Be Unfairly Burdened By Take-Backs For A Service-Specific Overlay.

If take-backs become a permissible aspect of a service-specific overlay, they will impose specific costs on wireless providers and/or wireless customers. It is important to note, though, that *all* forms of NPA relief impose costs. For example, an NPA geographic split requires customers to issue new letterheads, printed materials, and advertising, while an all-services overlay requires conversion of all automated devices to ten-digit dialing. The issue is not whether NPA relief will create costs, but who will bear them. Customers in

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[5] TEX. UTIL. CODE ANN. Title II (Vernon pamphlet 1998).

[6] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 *et. seq.*).

Connecticut and elsewhere, including Texas, have expressed a preference for a wireless overlay including take-backs. They appear willing to bear the costs of this form of NPA relief. For customers in an NPA, a wireless overlay requires all of them to change some of their telephone numbers; an NPA split would require some customers to change all of their telephone numbers. The relative burdens and benefits of a service-specific overlay do not appear disproportionate in comparison with other forms of NPA relief.

B. Service-Specific Overlays Are Consistent With Numbering Resource Initiatives.

The PUCT and several other state commissions have developed number conservation measures in an effort to defer the need for NPA relief through more efficient NXX code utilization. One of the most promising conservation measures for metropolitan areas is number pooling, a system in which one or more carriers could share an NXX code. The Commission and the North American Numbering Council (NANC) have recognized the promise of number pooling and directed the formation of a Number Resource Optimization Working Group (NRO-WG) to report on number pooling by September 23, 1998, with potential nationwide implementation by the end of 1999. Number pooling trials are under investigation by Illinois, New York, Texas, Pennsylvania, and perhaps other states.

All forms of number pooling architecture depend on the implementation of permanent local number portability (LNP). Under the current Commission timetable, wireless carriers will not be LNP-capable until June 30, 1999, and there are petitions pending before the Commission to extend that deadline for a year or more. The inability or unwillingness of

wireless carriers to implement LNP sooner will prevent them from participating in number pooling and diminish the NXX code savings that can be realized from number pooling. A wireless carrier will continue to request whole NXX codes, and a wireless carrier would be incapable of sharing its NXX code with other wireline or wireless carriers. This limitation may be partially offset by a wireless carrier's high number utilization rates in populated metropolitan rate centers, but it will preclude NXX code savings that could be realized in smaller rate centers by wireless and wireline carriers participating in number pooling. Until wireless carriers can participate in LNP, a service specific overlay will not impede the implementation of LNP or of number pooling.

The PUCT suggests that this technology-specific difference between wireless and wireline carriers justifies treating the forms of service differently and implementing a service-specific overlay in some circumstances. When wireless carriers become LNP-capable, the service-specific overlay could be converted to an all-services overlay. Such a conversion could then realize fully the benefits of LNP and of number pooling.

The PUCT is unaware of any other number conservation initiative, such as rate center consolidation, that would be impaired by a service-specific overlay.

III. CONCLUSION

The PUCT remains committed to bringing the benefits of competition in telecommunications to customers in every area of our state and the nation. In the area of NPA relief, however, it does not appear that the interests of competition are advanced by the

Commission's prohibition of a service-specific overlay. Furthermore, it appears that customer interests may be harmed and customer preferences may be ignored by such a prohibition. The PUCT urges the Commission to initiate a rulemaking on this issue and reconsider its prior rulings in light of new information and state experiences.

Respectfully submitted on May 6, 1998,

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